Outer Space: New Challenges to Law and Policy by J. E. S. Fawcett
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The International Lawyer, Vol. 19, No. 3 (Summer 1985), pp. 1038-1040
Published by: American Bar Association
Stable URL: http://www.jstor.org/stable/40705667
Accessed: 12/06/2014 15:41

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Outer Space: New Challenges to Law and Policy

By J. E. S. Fawcett; Oxford, Clarendon Press; New York, Oxford University Press; 1984; pp. vi, 169. $24.95.

In this short book, J. E. S. Fawcett, DSC, professor emeritus of international law, University of London, identifies the unprecedented importance of space activities and calls for a further assessment of relevant policies and laws. Eight chapters focus on topics constituting the fabric of international space law. They deal with the province of mankind, the uses of outer space, space operators, telecommunications, remote sensing, space stations, astronomical observation, and strategic uses of outer space. A final chapter offers a general view of the future.

In the fourteen-page chapter on astronomical observation, attention is drawn to the science and technology of the solar system and beyond and of cosmology. These pages constitute a primer on the physical environment in which space activities occur. In this unique and sobering assessment, the reader obtains insights as to the physical constraints on space activity and the natural hazards confronting those who travel to outer space and celestial bodies for the purposes of exploring, using, and exploiting the area and its valuable resources.

The book draws attention to many of the principles set forth in the five UN-sponsored outer space treaties. The appendix republishes the terms of the 1967 Principles Treaty, the 1972 Liability for Damages Convention, the 1975 Registration Convention, and the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies. However, the 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space is not reproduced.

Professor Fawcett accepts the mandate of the 1967 Principles Treaty that outer space should serve the common interest of mankind. This is to be realized through the fullest possible use of the area and its resources, including the capture and return to Earth of solar energy. He asks whether this goal can be achieved in the light of the prohibition contained in Article 2 of the Treaty which ordains that national sovereignty shall not exist in space. However, when it is considered that solar energy is a constantly renewing natural resource, it may be concluded that the capture of such energy is to be treated as a use of the resource, which is authorized by Article 1, paragraph 1 of the Treaty. Moreover, the Treaty does not inhibit the exploration, use, and exploitation of the natural resources of the area. Thus, the author's concerns may be ascribed to excessive caution. Undoubtedly, future users and exploiters of this resource need not be immobilized pending the unlikely revision of Article 2.

Fawcett has drawn attention to analogies between ocean law and space

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law. He has identified practical lessons derived from both ocean and air activities and the treaty regimes which apply to them. Several references are made to the need to protect the natural environment against harmful pollutants, the special needs of the developing countries to share in benefits flowing from space activities, and the need for the establishment of institutions suited to the formal management of such activities so that orderly procedures will govern the use and exploitation of space resources.

Among the suggestions made by the author, some not often heard, are that the exclusive economic zone now applicable to the ocean might be used for space, that astronauts who land in foreign countries might be able to claim asylum, and that the World Intellectual Property Organization agreement "implies" the need for agreement among sending and receiving states when transnational broadcasts occur. Some of the suggestions may be challenged, for example, the view that States when entering into widely supported multilateral agreements (eighty-five states are parties to the 1967 Principles Treaty) may not impose certain duties on States and international intergovernmental organizations. However, the author argues that article 6 of the agreement, which does impose such constraints, is a policy directive rather than a rule of law, and that as promulgative of policy it does not allow for the parties to create obligations for third parties.

Important arguments are made in favor of the sharing of outer space resources, based on the common-interest-of-mankind provision of the 1967 Principles Treaty and the common-heritage-of-mankind principle of the 1979 Moon Agreement, of the common need to protect the human environment against harmful pollutants and space debris, of the need to assure the efficient use of orbit and spectrum resources in the light of increasing and competing demands for the operation of broadcast facilities, and of the implementation of international norms by domestic procedures.

The author observes that, in the debates relating to direct television broadcasts, unwilling recipients had offered vague invocations of national sovereignty as the basis for preventing such broadcasts. He comments at page 74:

> But if sovereignty here is to be understood as meaning an exclusive right or jurisdiction over the reception of broadcasts in state territory, it cannot itself be either the basis or explanation of a right to require and give prior consent; for the bare statement that the right of prior consent is a sovereign right is, like many statements involving sovereignty, a circularity: what is in effect being said is that the reception of broadcasts in State territory is within its exclusive jurisdiction because it is within its sovereignty, that is, its exclusive jurisdiction.

In the light of this assessment of the relevance of claims of national sovereignty, Fawcett supports the policies contained in the 1969 Human Rights Covenant on Civil and Political Rights, which assigns preference to seeking, imparting, and receiving of direct broadcast information over any rule of non-intervention in domestic affairs or the proposed, but still highly

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controversial, duty of obtaining the prior consent of the recipient country.

Professor Fawcett urges that constraints should be imposed on current trends toward the militarization of space. He attributes to technological advancement the increasingly destabilized relationship among the United States, the Soviet Union, and other countries. In his view, industrial and political forces give direction to scientific and technological inquiries. The author takes several positions with which the reviewer respectfully disagrees. The author believes that the space shuttle when in a landing mode is an aircraft. He suggests that proprietary rights cannot presently be acquired by those who are able to remove moon resources from their "in place" location.

While history may prove the author correct in asserting that the common-heritage-of-mankind principle contained in the 1979 Moon Agreement, which entered into force as the book was being published, possesses "property overtones," this clearly was not the intent of the early proponents of the principle. In the reviewer's opinion, the relevant provisions of article 11 of the 1979 Agreement allow one who is able to take possession of "in place" resources to obtain exclusive proprietary rights to them. In examining the law on this subject, it is necessary to go beyond a literal reading of the terms of the Agreement to an analysis of the positions advanced during the negotiations and also to interpretative statements made by the negotiators.

Professor Fawcett cogently raises many critical issues of space law and policy. His book serves usefully to open the field to the novice. For basic insights it can be read in conjunction with Judge Manfred Lach's *The Law of Outer Space*, published in 1972. For a more comprehensive view of international space law and policy students may wish to consult books published in recent years by American, Canadian, and Soviet scholars.

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